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TRADEMARK

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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In re Application of: GoldToeMoretz, LLC
Serial No.: 77/310,576
Filed: October 23, 2007
Mark: **GOLDTOE MORETZ**
(Int. Class 25)
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Trademark Attorney:
Linda A. Powell
Law Office: 117

U.S. Patent and Trademark Office
Trademark Trial and Appeal Board
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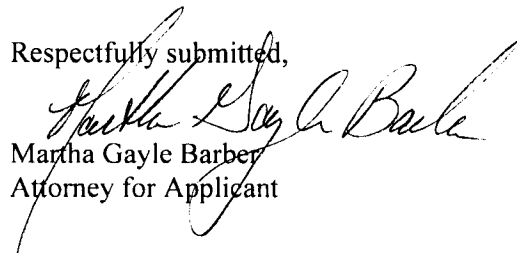
NOTICE OF APPEAL

Applicant respectfully asserts that its GOLDTOE MORETZ application is entitled to registration on the Principal Register. Applicant therefore appeals from the Final Office Action dated September 17, 2009, pursuant to 15 U.S.C. § 1070 and 37 C.F.R. § 2.141. This Notice of Appeal is being filed concurrently with a Response to the Final Office Action, and Applicant respectfully requests that the Appeal be suspended pending consideration of the Response. Applicant encloses herewith the requisite filing fee of \$100 per International Class (\$100 total) in compliance with 37 C.F.R. § 2.6(a)(18).

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Respectfully submitted,

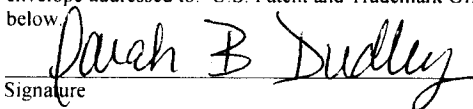

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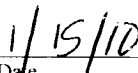
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01-19-2010

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GoldToeMoretz, LLC

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Trademark Law Office: 117

Trademark Examining Attorney:

Linda A. Powell

BOX RESPONSE – NO FEE

Commissioner for Trademarks

P.O. Box 1451

Alexandria, Virginia 22313-1451

COPY

RESPONSE

In response to the Final Office Action dated September 17, 2009, Applicant respectfully requests that the Examining Attorney reconsider this Application based on the following remarks and Exhibits in support of the registration of its GOLDTOE MORETZ mark. Applicant notes that a Notice of Appeal is being filed concurrently with this Response.

Requirement of a Disclaimer

In the Final Office Action, the Examining Attorney asserted that the wording GOLDTOE is descriptive of Applicant's goods under Trademark Act § 2(e) and required that the wording GOLDTOE be disclaimed. Applicant respectfully submits that the term GOLDTOE is not merely descriptive, but is at most suggestive of Applicant's goods, and Applicant reserves the right to present arguments to this effect at a later date, if necessary.

In the alternative, however, Applicant seeks registration under Trademark Act § 2(f) based on acquired distinctiveness of the wording GOLDTOE. TMEP § 1212.02(c). As the attached Exhibits demonstrate, the GOLDTOE brand has been in existence since the Great

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Depression of 1929 and currently represents more than half of all department store sales of men's dress socks in the United States. **Exhibit A.** Goods sold under the GOLDTOE brand were originally produced by Great American Knitting Mills, but Great American Knitting Mills changed its name to Gold Toe Brands, Inc. in 2002. **Exhibit A.** Then, in 2006, Gold Toe Brands merged with Moretz to become GoldToeMoretz, the present Applicant. **Exhibit B.** Although Applicant, in its current form, has only been in existence for approximately (3) years, the GOLDTOE mark itself is at least 80 years old, and the good will associated with the mark inures to the benefit of Applicant.

As noted in the Worldwide Consent to Use and Registration Agreement filed with the USPTO on August 31, 2009, and accepted by the Examiner as indicated in the Final Office Action dated September 17, 2009, consumers associate the GOLDTOE brand with a single producer of quality goods, regardless of the legal or corporate structure of that producer. This association, by definition, establishes that the wording GOLDTOE has acquired secondary meaning. "To establish secondary meaning, it must be shown that the primary significance of the term in the minds of the consuming public is not the product but the producer (citations omitted). This may be an anonymous producer, since consumers often buy goods without knowing the personal identity or actual name of the manufacturer." *Ralston Purina Co. v. Thomas J. Lipton, Inc.*, 341 F. Supp. 129, 133, 173 USPQ 820, 823 (S.D.N.Y. 1972) (emphasis added).

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A consumer seeking GOLDTOE products would go to the official website for GOLDTOE at www.goldtoe.com (**Exhibit C**), for example, as a result of a Google® search for “GOLDTOE.” Clicking on the “About Us” tab from the main page shown in **Exhibit C** would lead the consumer to the page shown in **Exhibit D**, which clearly indicates that the website belongs to Applicant (GoldToeMoretz, LLC). Clicking on the “About GOLD TOE®” tab from this page leads the consumer to **Exhibit A**, which discusses the GOLDTOE brand’s long history, as briefly described above. As such, the distinctiveness of the GOLDTOE brand, generated over the past eight decades, is now associated with Applicant’s use of the brand.

As further evidence of the acquired distinctiveness of the wording GOLDTOE, Applicant also encloses the Declaration of Chuck J. Ward (**Exhibit E**) supporting Applicant’s claim pursuant to 37 CFR § 2.20 and 37 CFR § 2.41(b). The Declaration asserts that, as a result of the change of name from Great American Knitting Mills to Gold Toe Brands, Inc. in 2002 and the merger of Gold Toe Brands with Moretz in 2006, Applicant (GoldToeMoretz, LLC) has constructively used the GOLDTOE mark in commerce in connection with apparel including sockwear in International Class 25 at least as early as 1987.

In light of the remarks above and the attached Exhibits, Applicant respectfully requests that the requirement for a disclaimer of the wording GOLDTOE be withdrawn and that registration under Section 2(f) be approved for the GOLDTOE portion of the mark.

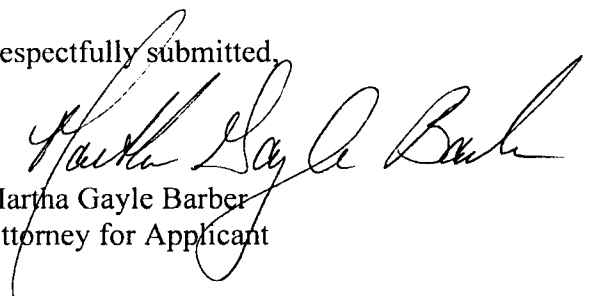
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In light of the Response and attached Exhibits A-E submitted herein directed to the issues raised by the Examining Attorney, Applicant respectfully requests that the Examining Attorney withdraw the finality of the Office Action and allow the application to proceed to publication under Section 2(f) for the GOLDTOE portion of the mark at the earliest possible date. Such favorable action by the Examining Attorney is respectfully solicited.

Respectfully submitted,


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CERTIFICATION OF MAILING

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